REMARKS

Claim Objections

The examiner objected to the claims, stating: "**The numbering of claims 40-43 in not in accordance with 37 CRF 1.126 which requires the claims not be renumbered. Applicant should cancel claims 39-43 and add those limitations into new claims 44-47.**"

Not conceding the examiner's position, Applicant has cancelled claims 39-43 and added new claims 44-47 to expedite prosecution of the application.

Claim Rejections - 35 USC § 103

The examiner rejected Claims 17-43 under 35 U.S.C. 103(a) as being unpatentable over DeLapa et al. (6,076,068 hereinafter DeLapa) in view of Langseth et al. (6,694,316 hereinafter Langseth).

The examiner stated in part...

> **DeLapa is silent as using a predetermined time interval in which the individual interacts or redeems the offer. Official Notice is taken that it is old and well known to use a predetermined time interval to see how effective the offers are. For example, in certain promotion schemes if the customer doesn't redeem the offer within a predetermined time period the amount of the offer is decreased in order to motivate the customer to redeem or respond to the offer in a timely manner. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included using a predetermined time interval in which the individual interacts or redeems the offer in order to obtain the above mentioned advantage.**

Claim 17 recites "producing a marketing campaign comprising a plurality of offers specified by offer data processing rules ... from which one or more of the offers are identified for targeting specific individuals, with at least one of the offer data processing rules ... to determine a set of offers based on a predetermined time interval as the specific individuals interact with each of the set of offers." As an example of such offer data processing rule , each marketing campaign may be associated with a lifecycle that specifies time-based rules that affect how one or more offers are sent to an individual.

The examiner appears to take Official Notice in rejecting the features incorporated into the claim in the amendment submitted on December 22, 2008. Applicant challenges the examiner's taking of this official notice and specifically requests that the examiner furnish documentary evidence that: "**it is old and well known to use a predetermined time interval to see how effective the offers are. For example, in certain promotion schemes if the customer doesn't redeem the offer within a predetermined time period the amount of the offer is decreased in order to motivate the customer to redeem or respond to the offer in a timely manner**" for reasons set forth below.

In addition, Applicant contends that the examiner's Official Notice does not remedy the deficiencies of the alleged combination of DeLapa and Langseth because the Official Notice neither describes nor would render obvious the features of the claim that the notice allegedly teaches.

Claim 17 calls for: "offer data processing rules determin[ing] a set of offers based on a predetermined time interval as the specific individuals interact with each of the set of offers."[1] The Official Notice refers merely to using a time interval to see how effective "the offers" are, and does not suggest to "determine a set of offers." Thus, the Official Notice whether or not properly combined with DeLapa and Langseth cannot render obvious features of claim 17.

Further, Applicant contends that the examiner's assertion of Official Notice does not satisfy the requirements of MPEP 2144.03 because the examiner has not shown that the facts asserted are well-known or capable of instant and unquestionable demonstration as being well-known. Rather, the explanation of the Official Notice provided relies on the specific example of "in certain promotion schemes if the customer doesn't redeem the offer within a predetermined time period the amount of the offer is decreased in order to motivate the customer to redeem or respond to the offer in a timely manner." If the promotional schemes described do exist, as the examiner contends, Applicant asserts that the inclusion of this specific category of promotional schemes in the rejection is an assertion of specific knowledge of the prior art by the examiner

[1] For the examiner's benefit in understanding this feature, examples of a "determined set of offers" (e.g. follow-up offers) are described in paragraph [0061] of the published application, corresponding to page 11, lines 4 – 19 of the specification as originally filed.

and must be supported by the examiner, with the examiner furnishing citations to reference works recognized as standard in the art.[2]

Accordingly, absent such citation, Applicant requests a withdrawal of the rejection citing the Official Notice. Alternatively, if the rejection is maintained with official notice, Applicant requests that the examiner cite a concrete reference in support of the rejection in a new, non-final action.

As noted by the examiner, DeLapa is silent on the matter of at least one of the offer data processing rules...determin[ing] a set of offers based on a predetermined time interval as the specific individuals interact with each of the set of offers. Further, Langseth is not understood to remedy the foregoing deficiencies of DeLapa. Langseth fails to disclose or suggest that at least one of the offer data processing rules determines a set of offers based on a predetermined time interval as the specific individuals interact with each of the set of offers.

For at least these reasons, independent claim 17 is believed to be patentable over DeLapa in view of Langseth and the Official Notice. Independent claims 31 and 33 include limitations that are similar to those of independent claim 17. These claims are also believed to be allowable for at least the same reasons noted above.

Each of the pending dependent claims are also believed to define patentable features of the invention. Each dependent claim partakes of the novelty of its corresponding independent claim and, as such, has not been addressed specifically herein.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this

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[2] "Assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art and the appellant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference. [...] Allegations concerning specific 'knowledge' of the prior art, which might be peculiar to a particular art should also be supported and the appellant similarly given the opportunity to make a challenge." In re Ahlert, 424 F.2d 1088 (C.C.P.A. 1970).

paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Applicants' undersigned attorney can be reached at the address shown below. All telephone calls should be directed to the undersigned at 617-368-2191.

The fee in the amount of $1110 for the Petition of Extension of Time is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account Authorization. Please apply any other charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 10235-048001.

Respectfully submitted,

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